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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 STEPHANIE DAPPER,

9 Plaintiff,

10 v.

11 BRINDERSON, LLC, et al.,

12 Defendants.

C23-0632 TSZ

ORDER

13 THIS MATTER comes before the Court on a motion for partial dismissal of the
14 complaint, docket no. 19, brought by Defendants Brinderson, LLC and Brock West, LLC
15 f/k/a Aegion Energy Services, LLC (collectively, the “Brinderson Defendants”). Having
16 reviewed all papers filed in support of, and in opposition to, the motion, the Court enters
17 the following order.

Background

18 Plaintiff Stephanie Dapper is a resident of Skagit County, Washington. Compl. at
19 ¶ 1.1 (docket no. 1). Defendants Brinderson, LLC (“Brinderson”), Aegion Energy
20 Services, LLC (“Aegion”), and Marathon Petroleum Company, LP (“Marathon”) conduct
21 business in Skagit County, Washington. *Id.* at ¶¶ 1.2–1.4.

1 In or around April 2018, Brinderson and Marathon hired Dapper as a Fire Hall
2 Technician at Marathon’s Anacortes Refinery (the “Refinery”). *Id.* at ¶ 1.10. Dapper
3 received her pay, benefits, and tax forms from Brinderson but mostly interacted with
4 Marathon employees during her day-to-day work at the Refinery. *Id.* at ¶¶ 1.11–1.12. In
5 addition, Dapper’s direct supervisor, Rory Eaton, and his supervisor, Darick Brewer,
6 were Marathon employees, and Mr. Eaton and Mr. Brewer assigned projects to Dapper
7 and assessed her performance. *Id.* at ¶ 1.14. Marathon also determined Dapper’s work
8 schedule, provided Dapper with the tools she used at work, and gave Dapper a Marathon
9 email account. *Id.* at ¶¶ 1.15–1.16. Dapper’s primary Human Resources contact was
10 Aegion employee Jessica Perez-Okuno. *Id.* at ¶ 1.13.

11 Dapper’s position as a Fire Hall Technician included making sure “fire safety and
12 equipment practices were up to regulatory standards to ensure the safety of other
13 Marathon employees at the Refinery.” *Id.* at ¶ 1.17. Dapper alleges “Marathon did not
14 permit [her] to perform certain work at the Refinery that she was qualified and certified
15 to perform, including driving and fire teams work.” *Id.* at ¶ 1.18. In contrast, “[h]er
16 male colleagues with the same or similar qualifications at the Refinery were permitted to
17 perform this work.” *Id.*

18 In February 2021, Dapper went on maternity leave, which lasted longer than
19 anticipated because of complications from childbirth. *Id.* at ¶ 1.19. Dapper returned to
20 work at the Refinery in July 2021. *Id.* After she returned to work, Dapper learned that
21 Mr. Eaton discussed firing her while she was on maternity leave, and Dapper confronted
22 Mr. Eaton. *Id.* at ¶ 1.20. Mr. Eaton admitted he did not expect Dapper to return from
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1 maternity leave but denied he discussed firing Dapper. *Id.* Dapper alleges Mr. Eaton
2 also made suggestive comments about her appearance during this conversation. *Id.*

3 On one occasion at the Refinery, Mr. Eaton approached Dapper and instructed her
4 to get into a truck. *Id.* at ¶ 1.21. Mr. Eaton would occasionally drive Dapper in the truck
5 for work. *Id.* On this occasion, however, Mr. Eaton allegedly drove Dapper to his house
6 and told Dapper his wife was not home. *Id.* After Dapper refused to enter Mr. Eaton's
7 house, Mr. Eaton went inside before returning to the vehicle and driving Dapper back to
8 the Refinery. *Id.* Dapper alleges Mr. Eaton then started touching her at work, including
9 touching her stomach in front of her coworkers. *Id.* at ¶ 1.22.

10 In September 2021, Dapper met with Mr. Eaton and requested that he stop
11 touching her and engaging in inappropriate behavior. *Id.* at ¶ 1.23. Dapper told Mr.
12 Eaton "that his behavior made her feel extremely uncomfortable and that it created a
13 hostile work environment for her." *Id.* Mr. Eaton told Dapper not to have private
14 meetings with his supervisor, Mr. Brewer. *Id.* Dapper then met with Mr. Brewer and
15 reported Mr. Eaton's conduct. *Id.* at ¶ 1.24. Mr. Brewer confirmed that Mr. Eaton
16 planned to fire Dapper while she was on maternity leave. *Id.* Dapper started reporting
17 directly to Mr. Brewer after their meeting. *Id.* Dapper also met with Ms. Perez-Okuno,
18 who requested a written statement, which Dapper provided. *Id.* at ¶ 1.25.

19 After Dapper raised her complaints of discrimination and harassment, she
20 allegedly started "receiving notifications that unauthorized users were attempting to
21 access her private social media accounts, including Snapchat." *Id.* at ¶ 1.26.
22 Additionally, Dapper started "noticing Mr. Eaton's friends at the Refinery were glaring at

1 her and following her around the Refinery[,]” and Dapper reported this behavior to
2 Ms. Perez-Okuno. *Id.* at ¶ 1.27.

3 In October 2021, Dapper found out “Mr. Eaton’s friends referred to her by a
4 sexually suggestive nickname[,]” and Dapper reported this behavior to Ms. Perez-Okuno.
5 *Id.* at ¶ 1.28. Dapper was then interviewed by Marathon’s legal counsel. *Id.* at ¶ 1.29.
6 Marathon’s legal counsel allegedly asked her invasive personal questions and told
7 Dapper that one of Mr. Eaton’s friends accused her of inappropriately touching him. *Id.*
8 Dapper was told to go home after the meeting. *Id.* Brinderson subsequently told Dapper
9 that Marathon did not want her to return to work and placed her on indefinite
10 administrative leave. *Id.* at ¶ 1.30. While on administrative leave, Dapper frequently
11 asked when she could return to work. *Id.* at ¶ 1.31.

12 Ms. Perez-Okuno then told Dapper that Dapper’s employment would terminate on
13 January 21, 2022. *Id.* at ¶ 1.32. In April 2022, Dapper filed charges against Aegion,
14 Brinderson, and Marathon with the Equal Employment Opportunity Commission. *Id.* at
15 ¶¶ 1.33–1.34. After her employment was terminated, Dapper learned from a Marathon
16 employee that intimate images of her were allegedly posted to an online forum. *Id.* at
17 ¶ 1.35. That Marathon “employee refused to tell [Dapper] how he learned of the pictures
18 or the name of the Marathon employee who posted them.” *Id.* Such images were posted
19 on multiple occasions. *Id.* at ¶¶ 1.35–1.36.

20 Dapper brings multiple claims against the Defendants: (i) gender discrimination in
21 violation of 42 U.S.C. § 2000e *et seq.* (“Title VII”) and the Washington Law Against
22 Discrimination (“WLAD”); (ii) retaliation in violation of Title VII and the WLAD; and
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1 (iii) gender discrimination in violation of the Equal Pay and Opportunities Act,
2 RCW 49.58 *et seq.* (“EPOA”). *Id.* at ¶¶ 1.38–1.48. With respect to her third cause of
3 action, Dapper alleges that Aegion, Brinderson, and Marathon “violated the EPOA by
4 limiting [her] career advancement and depriving her of career advancement opportunities
5 on the basis of her gender.” *Id.* at ¶ 1.47. The Brinderson Defendants now move under
6 Federal Rule of Civil Procedure 12(b)(6) to dismiss the EPOA claim against them,
7 arguing that Dapper failed to allege sufficient facts to state a claim. Mot. (docket no. 19).
8 Defendant Marathon “does not oppose the relief requested by” the Brinderson
9 Defendants. Marathon Resp. at 1 (docket no. 21).

10 **Discussion**

11 **1. Rule 12(b)(6) Standard**

12 Although a complaint challenged by a Rule 12(b)(6) motion to dismiss need not
13 provide detailed factual allegations, it must offer “more than labels and conclusions.”
14 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In ruling on the pending motion
15 for partial dismissal of the complaint, the Court must assume the truth of Dapper’s
16 allegations and draw all reasonable inferences in her favor. *See Usher v. City of Los*
17 *Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). The question for the Court is whether the
18 facts in the complaint sufficiently state a “plausible” ground for relief. *See Twombly*, 550
19 U.S. at 570.

20 **2. Dapper’s EPOA Claim Against the Brinderson Defendants**

21 The EPOA provides that “[a]n employer may not, on the basis of gender, limit or
22 deprive an employee of career advancement opportunities that would otherwise be
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1 available.”¹ RCW 49.58.030(2). According to Dapper, “[t]o show a violation of the
 2 EPOA, a plaintiff need only show a gender-based differential in career advancement
 3 opportunities.” Pl.’s Resp. at 3 (docket no. 23) (citing *inter alia Rizo v. Yovino*, 950 F.3d
 4 1217, 1223 (9th Cir. 2020)).² Dapper maintains that “[o]nce she has made such a
 5 showing, ‘the burden shifts to the employer to show an affirmative defense’ and ‘[n]o
 6 showing of pretext is required.’” Pl.’s Resp. at 3–4 (quoting *Rizo*, 950 F.3d at 1123).³

7 Even under the standard she asserts, Dapper fails to plead a violation of the EPOA.

8 In her complaint, Dapper alleges that Marathon did not allow her to perform certain work
 9 that her male colleagues with the same or similar qualifications were allowed to perform,
 10 and that Aegion, Brinderson, and Marathon limited her career advancement opportunities
 11 because of her gender. Compl. at ¶¶ 1.18, 1.39, & 1.47. Dapper’s complaint fails,

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13 ¹ The EPOA provides a private right of action for actual damages, statutory damages, interest on
 14 compensation owed, and costs and reasonable attorneys’ fees. See RCW 49.58.070.

15 ² The parties cite to cases discussing the federal Equal Pay Act (“EPA”). Mot. at 3 (docket no. 19); Pl.’s
 16 Resp. at 3 (docket no. 23). The EPOA is a relatively new statute without much case law. Washington
 17 courts are guided by the interpretation of analogous federal statutes. *Hudon v. W. Valley Sch. Dist. No.*
 18 208, 123 Wash. App. 116, 124, 97 P.3d 39 (2004) (noting that decisions interpreting the EPA may be
 19 helpful because the EPA is analogous to Washington’s equal pay act).

20 ³ The *Rizo* court explained that “EPA claims have just two steps: (1) the plaintiff bears the burden to
 21 establish a prima facie showing of a sex-based wage differential; (2) if the plaintiff is successful, the
 22 burden shifts to the employer to show an affirmative defense. No showing of pretext is required.” 950
 23 F.3d at 1223 (footnote omitted). The Brinderson Defendants cite to cases involving a motion to dismiss
 24 that articulate the same steps. See *McMinimee v. Yakima Sch. Dist. No. 7*, No. 18-CV-3073, 2019 WL
 25 11680199, at *12 (E.D. Wash. Aug. 7, 2019) (stating that a prima facie case under the EPA requires a
 26 plaintiff to prove that an employer pays different wages to employees of the opposite sex for equal work
 27 and once that showing is made, “the burden shifts to the employer to prove that the differential in wages
 28 is justified under one of the Equal Pay Act’s four exceptions” (citations omitted)); *Abdullah-El v. Bon*
 29 *Appetit Mgmt. Co.*, No. C15-1946, 2016 WL 1756630, at *5 (W.D. Wash. May 3, 2016) (“To establish a
 30 prima facie EPA case, the plaintiff must show that employees of the opposite sex were paid different
 31 wages for equal work.” (citation omitted)).

1 however, to allege facts regarding the availability of career advancement opportunities if
2 Aegion, Brinderson, and Marathon had allowed her to perform certain work. For
3 example, Dapper does not allege “driving and fire teams work” was a normal part of her
4 job as a Fire Hall Technician, or that Aegion, Brinderson, and Marathon prohibited her
5 from doing such work to limit her career advancement opportunities. In other words,
6 Dapper does not allege she was prohibited from doing work that would have led to a
7 promotion or other career advancement opportunities, and Dapper does not allege her
8 male colleagues who were allowed to perform such work were promoted. Instead,
9 Dapper makes a conclusory allegation that Aegion, Brinderson, and Marathon limited her
10 career advancement opportunities because of her gender without providing sufficient
11 factual support. *Twombly*, 550 U.S. at 555 (“Factual allegations must be enough to raise
12 a right to relief above the speculative level[.]” (citation omitted)). To sufficiently state
13 her claim, Dapper must plead facts clarifying how the Brinderson Defendants limited her
14 career advancement opportunities by not allowing her to perform certain work.⁴

15 Therefore, Dapper’s EPOA claim against the Brinderson Defendants is DISMISSED
16 without prejudice with leave to amend.⁵

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19 ⁴ In her response, Dapper states that “an amended complaint can identify the ways in which providing
20 [her] with lesser assignments limited her career advancement opportunities.” Pl.’s Resp. at 7 (docket
21 no. 23).

22 ⁵ Pursuant to Rule 15(a), leave to amend shall be freely given when justice so requires. A district court
23 may exercise its discretion and deny leave to amend for a variety of reasons, including undue delay,
repeated failure to cure deficiencies by previous amendment, undue prejudice to the opposing party, and
futility of amendment. *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010). The
Court exercises its discretion and GRANTS Dapper leave to amend her complaint.

1 Conclusion

2 For the foregoing reasons, the Court ORDERS:

3 (1) The Brinderson Defendants' motion for partial dismissal of the complaint,
4 docket no. 19, is GRANTED, and Dapper's gender discrimination in violation of the
5 EPOA claim (designated in Dapper's complaint as claim "C") against the Brinderson
6 Defendants is DISMISSED without prejudice with leave to amend.

7 (2) Dapper shall file any amended complaint on or before August 24, 2023.

8 Any answer or response is due within fourteen (14) days after the amended complaint is
9 filed. *See* Fed. R. Civ. P. 15(a)(3).

10 (3) The Clerk is directed to send a copy of this Order to all counsel of record.

11 IT IS SO ORDERED.

12 Dated this 10th day of August, 2023.

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15 Thomas S. Zilly
16 United States District Judge